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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/728,756

12/04/2000

Richard F. Bergen

D/01

2366

7590

01/23/2004

William A. Henry, II  
14 Barrington Hills  
Pittsford, NY 14534

EXAMINER

HARRINGTON, ALICIA M

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/728,756

Applicant(s)

BERGEN, RICHARD F.

Examiner

Alicia M Harrington

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/5/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6, 7, 10, 15, 17, 22, 23, 25-30, 32-36 and 41 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 15, 22, 23, 25-29 and 32-35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 30 and 36 is/are allowed.
- 6) ☒ Claim(s) 17 is/are rejected.
- 7) ☒ Claim(s) 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The affidavit filed on 11/5/03 under 37 CFR 1.131 has been considered but is ineffective to overcome the Goodrich et al (US 6,502,319) reference.
2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Goodrich et al (US 6,502,319) reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Applicants copy of the notebook page shows no proof that the idea was conceived before October 24,2000. The paper merely shows someone idea written down which was witnessed by people at any given point in time. Clearly there was no establishment of a date, and thus the submission is insufficient.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Follis (US 5,237,634) in view of Goodrich et al (US 6,502,319).

Regarding claims 17, Follis discloses a system for creating a light pattern within a plane (level). Follis teaches that the intersection of light orthogonal with a fiber optic rod produces light in a plane (see figures 2a and 2b) forming a line in a circular pattern (see col. 6, lines 34-69). Follis also discloses an embodiment where the fibers are configured as a hollow tube (see figure 4b; col. 8, lines 10-69). And upon the laser entering the tube it provides light projected into pattern. Follis also teaches that the altering device can have many forms, such as hollow tubes (conical/cone shaped/disk shaped) to provide light patterns in a plane, as taught by Follis.

However, Follis fails to disclose an embodiment where the hollow tubes form an array of tubes (capillary array).

In the same field of endeavor, Goodrich teaches an array of cylindrical lens may be used to receive laser light and project the light onto a line in a plane (see

figure 4;col. 2, lines 41-60). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Follis to provide for plane/line pattern formations when projecting light onto an array of cylindrical elements, as taught by Goodrich, to produce an improved visible line in the plane. Again, the prior art of light altering devices (line projectors) clearly teaches projecting light patterns in a plane using an array of cylindrical elements.

*Allowable Subject Matter*

4. Claims 10,30, 36 allowed.
5. Claim 41 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 10 and 36, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which include projecting laser light onto a hollow tube within a hollow tube to form an outward pattern of an optical line as claimed.

Regarding claim 41, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which at least include a capillary array is bundled as claimed.

### ***Response to Arguments***

7. Applicant's arguments filed 11/5/03 have been fully considered but they are not persuasive. Applicant argues that Follis (US 5,237,634) and Goodrich et al (US 6,502,319) fail to teach a 360-degree circle of light. However applicant is asked to look at figure 1a (24c) of Follis. Applicant also Webster's dictionary defines capillary in several ways, one definition being to resemble a hair e.g. in slender elongated form. Follis teaches using an elongated slender member (hollow tube or fiber) to project light onto plane. Goodrich further teaches the use of an array of cylindrical elements to cast/ project light onto a plane in a given shape. Thus, the prior art of light altering devices (line projectors) clearly teaches projecting light patterns in a plane using an array of cylindrical elements. Last but not least, applicant's affidavit is insufficient. Thus the rejection was repeated.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pelletier (US 6,539,638) discloses a line projection device.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M Harrington whose telephone number is 703 308 9295. The examiner can normally be reached on Monday - Thursday 9:30-6:00.

Art Unit: 2873


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 703 308 4883. The fax phone number for the organization where this application or proceeding is assigned is 703 872 9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



AMH

Alicia M Harrington  
Examiner  
Art Unit 2873



Georgia Epps  
Supervisory Patent Examiner  
Technology Center 2800